IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO.1510 OF 2006

1. Union of India & ors. Petitioners
vs.
Shri Kesharinath Dharmaji Thakuar Respondent

Mr.V.S.Masurkar with Mrs.S.V.Masurkar for the petitioners.

Mr.S.P.Inamdar for respondent.

CORAM : F.I.REBELLO &
ANOOP V. MOHTA,JJ.

DATED : 19th September, 2006

P.C.

Rule. Heard forthwith.

2. Respondent was earlier working as Extra Departmental Delivery Agent at Pen Sub Post Office. He appeared in the examination for appointment as Postman/mail-guard on 20.2.2000 and was declared qualified. On completion of 10 days satisfactory training he was appointed as postman at Chakala, MIDC Post Office with effect from 6.8.2001. Respondent appeared before the Civil Surgeon Thane on 23.8.2001 and got himself medically examined. The respondent received one month's notice of termination dated 23/26.12.2002 on 31.12.2002. By the said notice the services of the respondent were terminated on 31.1.2003. Respondent being aggrieved

preferred appeal which was rejected by order dated 29.4.2003. Aggrieved, the respondent preferred Original Application No.154/2004. It was the case of the respondent that the petitioners had failed to mention the particulars and rule under which one month's notice of termination was issued to the respondent. The petitioners had treated the applicant as directly recruited to the cadre of Postman and had forgotten that the applicant had been promoted to the post of Postman from the post of EDDA after putting in 18 years of service. It was the case of the respondent that as such it was not open to the petitioners to terminate his services without following the due procedure as laid down in the Constitution of India. Respondent also pointed out that a Criminal Case No.61/2001 which was pending before Judicial Magistrate, F.C.Pen, ended his acquittal by judgment and order dated 7.4.2003. The respondent had also preferred revision application against the order rejecting his appeal by referring to the judgment of the JMFC. The same was rejected by order dated 19.1.2004.

. On the other hand, on behalf of the petitioners, it was their case that the respondent secured employment by filling in attestation/police verification form for recruitment and giving service particulars. The respondent at the time of filling in the attestation

form had given false information that no criminal case is pending. On police verification it was detected that a criminal case was registered against the respondent. It may be mentioned that according to the petitioners, the respondent was appointed vide memo dated 4.9.2001. As the respondent had suppressed the fact of criminal case pending against him, his services were rightly terminated by invoking provisions of Rule 5 of CCS (Temporary Service) Rules. It was also reiterated that the respondent's recruitment in the Postman cadre was a fresh recruitment and not a promotion.

. The learned Tribunal, after perusing the contention as urged on behalf of the parties and the nature of the termination, held that though the order does not cast any stigma, but in the averments made in the reply filed by the petitioners it would be clear that the termination of the respondent's services was not simplicitor, but it was based on a charge that information given by the respondent in the attestation form was not correct. The learned Tribunal held that the order of termination should not have been passed against the respondent except after giving him an opportunity of hearing which in that case had not been given. In other words, the learned Tribunal came to the conclusion that the order has civil consequence and in these circumstances, the respondent ought to have been

given opportunity which was not given. The learned Tribunal also held that the termination of respondent's services based on misconduct without show cause notice is not sustainable in law. It is this order which is the subject matter of the present petition.

3. At the hearing of this petition, on behalf of the petitioners it is contended that the respondent had suppressed material facts at the time of giving information about his appointment. It was therefore open to the petitioners to have terminated the services under Rule 5 of the CCS (Temporary Service) Rules. The order of the learned Tribunal holding that the services of the respondent were terminated for misconduct discloses an error of law apparent on the face of the record and consequently is liable to be set aside.

4. The order dated 10.7.2001 would indicate that the officials mentioned in the notification were selected for Postman training as they had qualified in the Postman examination of 2000 held on 20.2.2000. The appointment thereafter came to done on 4.9.2001. We have perused the rules of recruitment. In so far as the post of Postman is concerned, there are two methods of recruitment: (i) 50% of the posts are to be filled in by promotion failing which ED Agents on the basis of their merit in the departmental examination and (ii) 50%

of ED Agents of the recruiting division in the manner set out. In case of promotion is concerned, EDAs can also be considered through the departmental examination. We, therefore, called the petitioners to point out to us the method of recruitment followed as it was the case of the respondent that it was by promotion and the case of the petitioners that it was by direct recruitment. Nothing has been brought to our attention. In so far as direct recruitments are concerned, there is an age limit between 18 and 25 years relaxable upto 35 years. Similarly ED Agents who have recruited on or before 16.11.1982 shall be eligible if they are within 42 years and those appointed after 16.11.1982 shall be eligible if they are within 35 years. The respondent has been in service as an EDA. There are two methods of recruitment and as the petitioners have been unable to show that the recruitment was by direct recruitment, we have to proceed on the footing that it was by promotion. If it be by promotion, then services could not have been terminated without following the constitutional mandate of Articles 14 and 311 of the Constitution of India. Apart from that it will be clear that before terminating the services of the respondent, if it could be terminated, the petitioners were bound to give an opportunity to the respondent before invoking Rule 5 of the CCS Rules on the ground that he has suppressed the fact that criminal case was pending against him. The

respondent appeared for the examination in the year 2000. At that time there was no case against him. He has also been acquitted though subsequently, no such opportunity appears to have been given to the respondent and for this reason also, we are not inclined to interfere with the order passed by the Tribunal. Even otherwise, considering the fact that the respondent has been working since 2.5.1982 and was selected as Postman and posted as Postman from 4.9.2001 and he has been acquitted of the charge of the theft, in our opinion, this would not be a fit case for us to interfere with the order passed by the Tribunal in our extraordinary jurisdiction.

5. In the light of that rule is discharged. No order as to costs.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA,J.)